IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO: 3002 of 2000

Between:

District Forest Officer, Kakinada Division, Kakinada

... PETITIONER

AND

R. Radha Krishna S/o. late R.S.Sundar Rao
Formerly Forester Gurtedu Section of Maredumilli Range, Kakinada Division (under suspension) now residing at D.No.56-5-14, Vidyanagar, Rajahmundry.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, suit or proceedings more particularly one in the nature of Writ of Certiorari calling for entire records pertaining to order Dt.30/12/1999 passed in O.A. Nos. 6117/99 and 7371/99 on the file of the A.P. Administrative Tribunal, Hyderabad and quash the same as illegal and arbitrary.

Counsel for the Petitioner: GP FOR SERVICES I

Counsel for the Respondent: MR.N.GURUGOPAL & S.R.SANKU

The Court made the following:

ORDER: - **(**per Hon'ble Sri J. Chelameswar, J)

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Aggrieved by an order in O.A.No.6117 of 1999 dated
30-12-1999 of the Andhra Pradesh Administrative Tribunal, Hyderabad, the respondent therein preferred this writ petition. The respondent herein was the applicant in the above mentioned O.As., was working as Forester in the service of the State of Andhra Pradesh.

2. On 27-05-1999 a crime was registered against the respondent herein for the offence punishable under Section 409 of the Indian Penal Code, on an allegation that he misappropriated government funds to a tune of Rs.2,45,605/-. By proceedings in Rc.No.5031/99P, dated
01-06-1999 the respondent was kept under suspension pending enquiry. On 31-07-1999 a Charge Memo was issued to the respondent. The respondent filed O.A.No.6117 of 1999 contending that in view of the pendency of the criminal case, the departmental enquiry could not be simultaneously conducted. Along with the above O.A., he filed a Miscellaneous Application seeking stay of disciplinary proceedings and also sought a direction for payment of the subsistence allowance during the period of suspension. It appears that the Administrative Tribunal by an order dated 14-10-1999 granted an interim order directing that the departmental proceedings shall not be finalized and also that the respondent be paid the subsistence allowance. It is to be mentioned here that admittedly the Administrative Tribunal did not stay the departmental enquiry. As a matter of fact, there was a positive direction in the interim order "……the respondents are further directed to proceed with the enquiry, but not to finalize the disciplinary proceedings until further orders".

3. According to the writ petitioner, the interim order was received by him on 22-10-1999 by which date the departmental enquiry proceedings were concluded and a final order of dismissal of the respondent herein was passed on 21-10-1999. Aggrieved by the order of dismissal, the respondent herein preferred one more O.A.No.7371 of 1999. Both the above mentioned O.As., came to be disposed of by a common order referred to earlier.

4. The petitioner herein did not choose to challenge the correctness of the order

made in O.A.No.7371 of 1999 for the reason that while the tribunal allowed both the above mentioned O.As., however, directed "…….to the official respondent to proceed with the enquiry, if necessary, only after the judgment of the criminal Court……."

5. The grievance of the writ petitioner is only against that part of the order extracted above in so far as it suggests to proceed with the fresh enquiry only after the judgment of the Criminal Court.

6. The law in this regard is fairly settled now that both departmental enquiry and criminal proceedings, in connection with a set of allegations pertaining to the conduct of an employee of the State, can simultaneously go on subject to certain exceptions. If a particular case is to be brought under an exception for the purpose of staying the departmental enquiry in view of the pendency of a criminal case on the same set of facts, some reasons are required to be assigned as to why the departmental proceedings could not be continued during the pendency of the criminal case, so as to attract one of the exceptions to the general rule that both of them can proceed simultaneously. The law on the subject as laid down by the Supreme Court in **CAPT. M.PAUL ANTHONY v. BHARAT GOLD MINES LTD.,** is reiterated by the Supreme Court in another judgment in **STATE BANK OF INDIA v. R.B. SHARMA**.

7 . In the present case, the Tribunal has not given any reason as to why the departmental enquiry cannot proceed during the pendency of the criminal case. In the circumstances, we are of the opinion, for the reasons mentioned above, the order under review in so far as it is challenged is unsustainable and is required to be set-aside to that extent. It is open to the petitioner to initiate fresh enquiry against the respondent herein and conclude the same in accordance with law.

8. It is brought to our notice that the respondent herein has not been paid any subsistence allowance so far. The petitioner if advised to proceed with the fresh enquiry may proceed with the same, but, however, must make the payment of the

subsistence allowance as per law.

9. The writ petition is accordingly allowed.

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J. CHELAMESWAR, J

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M. VENKATESWARA REDDY, J

Dt.07-06-2005

GLV/GS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this

Tuesday the Seventh day of July Two thousand and five.

ASSISTANT REGISTRAR

Copy to:

1. The District Forest Officer, Kakinada Division, Kakinada.

2. Two CCs., to the Government Pleader for Services I, High Court Buildings, Hyderabad. (OUT)

3. Two C.D. copies.

*Form-NIC-OGS/WP{**MUK**}*